

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**IIG WIRELESS, INC. f/k/a UNLIMITED PCS,
INC.; and UPCS CA RESOURCES, INC.**

and

Case 21-CA-152170

JOANNA ROSALES, an individual

**RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION**

Respondents IIG WIRELESS, INC. f/k/a UNLIMITED PCS, INC. ("IIG") and UPCS CA RESOURCES, INC. ("UPCS") (collectively, "Respondents"), through counsel and pursuant to the National Labor Relations Board's (the "Board") Rules 102.46 et. seq., file the following exceptions to the decision of Administrative Law Judge ("ALJ") Jeffrey D. Wedekind dated April 14, 2016.

1. Respondents except to the ALJ's continued application of the Board's holdings in *D.R. Horton, Inc.* 357 NLRB No. 184 (2012) and *Murphy Oil USA, Inc.* 361 NLRB No. 72 (2014) that arbitration agreements between employers and employees waiving rights to pursue class action litigation violate Sections 7 and 8(a)(1) of the National Labor Relations Act (the "NLRA") in light of the Court of Appeals for the Fifth Circuit's refusal to enforce the Board's decisions on that ground and the continued rejection of the Board's reasoning by other circuit courts based on binding precedent of the Supreme Court of the United States. *See Am. Express v. Italian Colors Rest.*, 133 S. Ct. 2304 (2013); *CompuCredit Corp v. Greenwood*, 132 S. Ct. 665 (2012); *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011); *Circuit City Stores,*

Inc. v. Adams, 532 US 105 (2001); *Murphy Oil v. NLRB* 808 F.3d 1013, *en banc* petition for hearing pending (5th Cir. 2015); *D.R. Horton, Inc. v. NLRB*, 737, F.3d 344, 359 (5th Cir. 2013); *Owen v. Bristol Care, Inc.*, 702 F.3d 1050, 1055 (8th Cir. 2013); *Johnmohammadi v. Bloomingdale's, Inc.* 755 F.3d 1072, 1077 (9th Cir. 2014); *Sutherland v. Ernst & Young LLP*, 726 F.3d 1050, 1055 (2nd Cir. 2013); *Walthour v. Chipio Windshield Repair, LLC*, 745 F.3d 1326, 1340 (11th Cir. 2014).

2. Respondents except to the ALJ's continued application of the Board's holdings in *D.R. Horton* and *Murphy Oil USA, Inc.* in light of the California Supreme Court's rejection of the Board's reasoning in those cases. See *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 367-74 (2014).

3. Respondents except to the ALJ's improper reliance on a Federal District Court ruling that is currently on appeal for the proposition that *D.R. Horton* and *Murphy Oil* have not been roundly rejected. *Totten v. Kellogg Brown & Root, LLC et al.* --- F. Supp.3d – 2016 WL 316019, 2016 US Dist. LEXIS 10424, (C.D. Cal. Jan. 22, 2016) (Dolly M. Gee, J.) (Appeal filed with the Ninth Circuit Feb 22, 2015 (NO. 16-55260)).

4. Respondents except to the ALJ's conclusion regarding violations of the NLRA as erroneous and contrary to the Federal Arbitration Act ("FAA"), as interpreted by the United States Supreme Court.

5. Respondents except to Conclusions of Law One through Three as erroneous, contrary to the FAA and contrary to established precedent.

6. Respondents except to the ALJ's conclusions on page 4, lines 1-13 and page 5, lines 34-36, that Respondents arbitration agreement would be construed to prohibit administrative charges with the Board.

7. Respondents except to the ALJ's conclusion on page 4, line 38 - page 5, line 10 that Charging Party Joanna Rosales' Charge was timely despite a meritorious statute of limitations defense.

8. Respondents except to the ALJ's conclusion that the arbitration agreement executed by Charging Party Joanna Rosales was not voluntary.

9. Respondents except to the Remedies and Order issued by the ALJ to the extent that they contravene previously issued Court orders, violate Respondents' First Amendment rights, and/or disregard the FAA.

10. Respondents except to the ALJ's failure to address Respondents' claim that the Board violated the Administrative Procedures Act.

WHEREFORE, for the reasons stated herein and in Respondents' brief in support of exceptions filed, Respondents pray that the Board dismiss the General Counsel's claim that the arbitration agreement executed by Charging Party violates sections 7 and 8(a)(1) of the Act in its entirety.

Respectfully submitted,

Dated: May 12, 2016

Respondents

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2016, I e-filed the foregoing **RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** using the Board's e-filing system, and immediately thereafter served it by electronic mail upon the following:


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Dated this 12th day of May, 2016, at Irvine, California.


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